

Exhibit W

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION
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8 UM CORPORATION, a Japanese)
9 corporation,)
10)
11 Plaintiff,)
12)
13 vs.) Case No.: 2:15-cv-03764-AB-AJW
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TSUBURAYA PRODUCTIONS CO.

LTD., a Japanese corporation,

Defendant.

Videotaped Deposition of:

LLOYD W. CUNNINGHAM

Date:

April 28, 2017

Reported by:

Stephanie P. Borthwick

C.S.R. No. 12088

Job No. 122608

1 Deposition of LLOYD W. CUNNINGHAM, taken on
2 behalf of the Plaintiff and Counterdefendants,
3 before Stephanie P. Borthwick, a Certified Shorthand
4 Reporter, commencing at the hour of 9:35 a.m.,
5 Friday, April 28, 2017, at the offices of
6 Litigation Services, 74199 El Paseo Drive,
7 Suite 201, Palm Desert, California.

8 APPEARANCES:

9 For the Plaintiff and Counterdefendant UM
Corporation and Counterdefendant Golden Media
10 Group, Inc., and TIGA Entertainment Limited:

11 PILLSBURY WINTHROP SHAW PITTMAN
Attorneys at Law

12 BY: JEFFREY WEXLER, ESQ.

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13 Los Angeles, California 90017

14
15 For the Defendant and Counterclaimant Tsuburaya
Productions:

16 QUINN EMANUEL URQUHART SULLIVAN

17 Attorneys at Law

BY: DANIEL POSNER, ESQ.

18 865 South Figueroa Street

Los Angeles, California 90017

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21 Videographer:

22 Luis Garcia
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1 THE VIDEOGRAPHER: Good morning. This is
2 the start of media labeled No. 1 of the video-
3 recorded deposition of Lloyd Cunningham in the
4 matter of UM Corporation versus Tsuburaya
5 Productions Co. LTD. This is in the United States
6 District Court, Central District of California,
7 Western Division. The case number is 2:15-cv-03764-
8 AB-AJW.

9 This deposition is being held at 74199
10 El Paseo Drive, Palm Desert, California, 92260.
11 Today's date is April 28th, 2017, and the time is
12 9:35 a.m.

13 My name is Luis Garcia. I'm a legal video
14 specialist from TSG Reporting, Inc., headquartered
15 at 747 Third Avenue, New York, New York. The court
16 reporter is Stephanie Borthwick in association with
17 TSG Reporting.

18 Counsel, please introduce yourselves.

19 MR. WEXLER: I'm Jeffrey D. Wexler of
20 Pillsbury Winthrop Shaw Pittman on behalf of
21 Plaintiff and Counterdefendant UM Corporation and
22 Counterdefendants Golden Media Group, Inc., and TIGA
23 Entertainment Company Limited.

24 MR. POSNER: Dan Posner from Quinn Emanuel
25 on behalf of Tsuburaya Productions Company.

1 THE VIDEOGRAPHER: Will the court reporter
2 please swear in the witness.

3 THE REPORTER: Do you solemnly state under
4 penalty of perjury that the testimony you will give
5 in this matter will be the truth, the whole truth,
6 and nothing but the truth?

7 THE WITNESS: I do.

8 THE REPORTER: Thank you.

9 EXAMINATION

10 BY MR. WEXLER:

11 Q. Good morning, Mr. Cunningham.

12 A. Good morning.

13 Q. Please state your full name for the record.

14 A. Yes, Lloyd W. Cunningham.

15 Q. Approximately how many times have you been
16 deposed?

17 A. I would say at least a 150 times.

18 Q. May I dispense with telling you the rules
19 of depositions?

20 A. No.

21 Q. You'd like me to tell you?

22 A. Yes.

23 Q. Okay. Well, you've taken an oath to tell
24 the truth under penalty of perjury. That's the same
25 oath that you would be taking if you testify in

1 Q. And is that the methodology you followed in
2 this case?

3 A. Yes.

4 Q. Is it preferable to have more than one
5 sample of a person's known handwriting when
6 determining whether a questioned handwritten
7 signature is authentic?

8 A. Absolutely.

9 Q. Why is that?

10 A. Because from one known signature it is
11 actually impossible to determine what that writer's
12 normal range of signature variation is and it does
13 not embody -- that one known signature does not
14 embody a fair representation of the fine and subtle
15 elements of that writer's signatures.

16 So, therefore, many individuals have what
17 are called formal and informal signatures and it's
18 not able to determine from one signature if an
19 individual utilizes formal and informal signatures.

20 So one formal signature or known signature
21 compared to one questioned signature could never
22 result in conclusive findings.

23 Q. So a formal signature might be, say, on a
24 birthday card?

25 A. No. A formal signature is generally

1 written on important documents, such as on a printed
2 will, a holographic will, some type of important
3 contract. And, generally, an informal signature
4 would be written if the FedEx guy comes to the front
5 door and asks you to sign on line 7 and you just
6 scribble or scrawl your signature. That would be
7 considered an informal signature.

8 There are times when formal signatures
9 versus informal signatures cannot be associated.
10 There are other times when formal and informal
11 signatures can be associated together.

12 Q. If someone is signing a letter, would that
13 be formal or informal or somewhere in between?

14 A. It all depends on the nature of the
15 formal -- it all depends on the nature of the letter
16 and it all depends on the mindset of the individual,
17 which I can't comment on.

18 Q. How about an autograph?

19 A. It all depends. Once again, an
20 autograph -- generally autographs are written under
21 very spontaneous conditions and awkward writing
22 conditions, so through my experience with autograph
23 signatures the bulk of them, in my opinion, would be
24 more of an informal style but that's not saying that
25 some could be formal signatures, such as an

1 autograph written on a pictorial.

2 Q. Or in a book?

3 A. Or in a book.

4 Q. Is it preferable to have as many samples of
5 a person's known handwriting as possible when
6 determining a questioned handwritten sample is
7 authentic?

8 A. Yes. Up to a certain point it's
9 preferable, but the main issue is to determine
10 through contemporaneous signatures, which are
11 contemporaneous to the questioned signature, what a
12 fair representation of the individual's normal
13 variation is.

14 Q. What time period would you consider
15 contemporaneous?

16 A. Oh, within a couple years before, within a
17 couple years before the questioned signatures were
18 written and a couple years after, which would
19 include dates that are very close to the disputed
20 signature.

21 Q. Why is the contemporaneous signature
22 preferable?

23 A. Contemporaneous signature is preferable
24 simply because some individuals get into a certain
25 writing mode within a certain timeframe or frame of

1 their life.

2 Generally, if a person is writing their
3 signature once they've adapted their mature
4 signature, which is generally in your early 20s,
5 throughout years up until maybe your 70s, if you're
6 not afflicted with some type of infirmity, a
7 signature generally stays fairly stable unless
8 there's an intentional efforts for that individual
9 to change their signature, which happens.

10 Another cause in change of signatures I've
11 experienced is with attorneys, for example. They
12 will have a certain signature before law school and
13 then after taking -- after taking copious notes and
14 having to write so rapidly all through law school,
15 their signatures and handwriting tend to change a
16 bit.

17 So you can have changes to that extent,
18 which is not intentional, to intentional changes,
19 but if a person is healthy their signature generally
20 stays fairly stable, at least the fundamental
21 structure of their signature remains stable.

22 Q. Is it preferable to receive samples of a
23 person's known handwriting without someone having
24 first reviewed the samples to decide which samples
25 to provide you for your consideration?

1 MR. POSNER: Objection. Incomplete
2 hypothetical.

3 THE WITNESS: Yes. Could you repeat that,
4 please.

5 MR. WEXLER: Could you read it back.
6 (The record was read as requested.)

7 THE WITNESS: No, to the contrary. If a
8 client picks and chooses the signatures that are
9 supposed to be known signatures to submit to a
10 forensic document examiner, they can in some cases
11 be very self-serving and it is ideal to just have
12 the client submit as many known signatures -- or I
13 should use the term purported known signatures to
14 the forensic document examiner and at that point
15 during the cross-comparison or intracomparison of
16 those known signatures or reported known signatures
17 by the forensic document examiner it's the forensic
18 document examiner who determines if they are all
19 written by one individual or if they are written by
20 more than one individual.

21 Then those known signatures are placed into
22 subsets and once -- for example, out of ten known
23 signatures, hypothetically, if I find two that do
24 not fit in to the other eight known signatures, then
25 I report that to my client that these cannot be used

1 or relied upon as genuine signatures of that
2 individual.

3 This happens quite often when signatures
4 are submitted, especially check signatures, and the
5 client has every good intention of submitting known
6 signatures but it ends up that maybe some of the
7 known signatures just happen to be signed
8 legitimately by a spouse.

9 So we have to be very careful when we
10 cross-compare the known signatures in order to vet
11 or weed out the signatures that are not genuine.

12 BY MR. WEXLER:

13 Q. Okay. And if a client has done the weeding
14 out for you, you're not able to do that analysis?

15 MR. POSNER: Objection. Vague.

16 THE WITNESS: The client, in my opinion,
17 doesn't have the expertise or training to do that
18 weeding out. That's why it is so important for a
19 forensic document examiner to do the cross-
20 comparisons of the known signatures, which is, once,
21 again, a very important examination.

22 When a client submits known signatures to
23 me, even if they have good intentions I don't
24 believe them. I don't believe that these are all
25 genuine known signatures that have been submitted to

1 me.

2 I do the cross-comparison and at that point
3 I determine whether they're all genuine or if there
4 are some red herrings included in the known
5 signature.

6 BY MR. WEXLER:

7 Q. What happens if a client selects a subset
8 of known signatures with a goal of, you know,
9 selecting signatures that are either dissimilar or
10 similar to a questioned document? How does that
11 affect your analysis?

12 A. Well, that would be considered self-serving
13 exemplars selected by a client or potential client
14 and, once again, that can be easily vetted through
15 cross-comparison if a substantial amount of known
16 signatures are submitted.

17 That would be, for example in this matter,
18 there were close to 30, I think, known signatures
19 submitted and I would be able to evaluate the normal
20 handwriting habits of Mr. Tsuburaya in that case;
21 however, if the client only submitted four or five
22 known signatures more contemporaneous to the
23 signature in question, that may pose a problem and
24 it may limit the strength of the conclusion provided
25 by the expert.

1 Q. I will walk you through the questioned and
2 known documents after we look at the invoice.

3 A. Would you please repeat your question about
4 the invoice?

5 Q. I just wanted to confirm this is, in fact,
6 your invoice dated February 14, 2017.

7 A. Yes, it is.

8 Q. Okay. And this invoice reflects your
9 preparation of the expert report?

10 A. Let's see.

11 That's correct.

12 Q. And the January 27, 2017, entry refers to
13 submission of an additional questioned signature;
14 correct?

15 A. Yes.

16 MR. WEXLER: I'm going to give you what's
17 previously been marked as Exhibit 129. This is a,
18 it says, "Contract" dated October 5, 1973. Please
19 disregard the second and third page, which, once
20 again, Japanese translation.

21 (Previously marked Exhibit 129 was identified.)

22 BY MR. WEXLER:

23 Q. And please confirm that this is the
24 additional questioned document to which you were
25 referring.

1 A. Yes, this is the same image.

2 Q. And was this the first time that you heard
3 that there was a second questioned document?

4 A. Yes.

5 Q. Had you seen this questioned document
6 attached to the foreign examiner's reports that you
7 had been provided back at the time you were first
8 engaged?

9 A. I don't recall seeing it. It may have
10 been, but I don't recall. I didn't take note of
11 that.

12 Q. Okay. And at this point in time you knew
13 that Tsuburaya wanted -- position in the lawsuit is
14 that this signature was not authentic; correct?

15 A. It was my job to determine whether it was
16 genuine or non-genuine.

17 Q. But you knew that Tsuburaya's position was
18 that it was not genuine; correct?

19 A. Not in this -- it was just submitted to me
20 as a questioned document. There was no dialogue
21 attached to it stating that Tsuburaya or anyone else
22 disputed it.

23 Q. Well, you knew that if this document was
24 being questioned in the lawsuit -- or at least you
25 had a good idea that this document was being

1 very misleading.

2 MR. WEXLER: The document says there were
3 thousands of signatures -- thousands of documents
4 bearing Noboru's signature and that's what I'm using
5 it for.

6 MR. POSNER: You could have asked him that
7 question without -- you already did ask him that
8 question, in fact, without having to go into a
9 snippet of mountains of testimony from a prior case
10 without any context.

11 So if your question is were you provided
12 with thousands of documents, that's a fine question
13 that he's already answered.

14 MR. WEXLER: It was a question that you
15 objected -- I was asking questions about
16 hypotheticals. You said hypothetical, lacks
17 foundation, and I'm establishing the foundation for
18 it.

19 Q. But you were provided with 29 signatures
20 from Noboru Tsuburaya; correct?

21 A. That's correct.

22 Q. And you saw that Mr. Wakshull's report
23 included a few more signatures from Noboru
24 Tsuburaya?

25 A. I believe so, yes.

1 additional putative known signatures that you were
2 provided on your exhibit -- provided on January 27,
3 '27 [as said] in your Exhibit B?

4 A. That's correct.

5 Q. Is that because you thought they were too
6 late in time to provide insight or insight beyond
7 what your fifth signature, September 1, 1988,
8 signature provided?

9 A. No. They were signatures that
10 Mr. Tsuburaya -- well, kind of made a transmission
11 of -- transition of his earlier signatures to the
12 late signatures and the fifth signature on this
13 chart is a fair representation of the more scrawled-
14 style signature that he used at a later date.

15 Q. Let's look at Exhibit 129, which is the
16 October 5, 1973, agreement, your Q2.

17 A. I have it.

18 Q. Is your opinion that the signature on the
19 1976 agreement is not authentic based in part upon
20 your conclusion that the -- or on your opinion that
21 the signature on the October 5, 1973, agreement is
22 not authentic?

23 A. No. I conducted an independent examination
24 of the Q1 signature without having in my possession
25 this Q2 signature. So both were examined, analyzed,

1 and evaluated separately; however, once I had both
2 in my possession, of course, I cross-compared them
3 to each other which is demonstrated in one of my
4 charts that we previously discussed.

5 Q. Okay. It's your opinion that this
6 agreement, your Q2, was likely signed by the same
7 person who signed your Q1; is that right?

8 A. I didn't reach that strong of a conclusion
9 pursuant to my report. I concluded that there are
10 handwriting features in common which indicate that
11 they may have been written or imitated by the same
12 individual and that some of the characteristics that
13 are quite different between these questioned
14 signatures and the known signatures may represent
15 some of the normal handwriting features of the
16 person who imitated these signatures.

17 Q. This is a hypothetical. If you were
18 provided with conclusive evidence that the
19 October 5, 1973, agreement had a genuine signature
20 on it, would that affect your opinion as to the
21 signature on your Q1, the 1976 agreement?

22 A. No. If this was provided to me as a known
23 signature, I would be able to easily discard this
24 from the known signatures because it doesn't fit in
25 and the nature of the signature and the errors in

1 simulations, because similar errors are made between
2 all these questioned signatures that do not exist in
3 the known signatures.

4 Q. Okay. You don't think that any of these
5 signatures, Q1, Q2, the two photographs are cut and
6 paste either, do you?

7 A. No. I can't see any evidence of that.
8 And, in addition, it doesn't make any sense for an
9 individual to cut and paste a non-genuine signature.

10 Q. Do you have any idea as to what document or
11 documents an imitator might have been using to make
12 a freeform signature on these documents?

13 A. Yes. It's referred to as freehand.

14 Q. Freehand, I'm sorry.

15 A. Yes. I wouldn't have any idea.

16 Q. Have you seen any documents that you think
17 would have been or could have been used to copy?

18 A. No. I didn't see anything that I could
19 refer to as the model signature and it's beyond my
20 capabilities or anyone's capabilities just to assume
21 a certain type of signature was used.

22 Q. I'm going to give you what I will represent
23 to you to be the universe of documents of which I'm
24 aware that would have been in possession of Sampote
25 Sittichai or his companies.

1 Are you familiar with the name Sampote?

2 A. I've read it, but I'm not familiar with the
3 purpose of the company.

4 Q. Sampote is the man identified in the 1976
5 agreement, Q1, as having been assigned rights. So
6 he would be most likely your imitator if you were
7 going to be thinking of who an imitator might be?

8 A. That's not true.

9 Q. Well, then correct me, please.

10 A. Because he could have had someone else do
11 it for him.

12 Q. Him or someone on his behalf.

13 A. That's right. Yes.

14 Q. Not going to be some random person roaming
15 around drafting up an agreement that would benefit
16 him.

17 A. No. It's someone or someone who he relied
18 upon to do this.

19 MR. WEXLER: Okay. So I will -- most of
20 these documents have been previously marked.

21 There's a couple of them that have not.

22 This is Exhibit 131. It's a November 13,
23 or "Noember" with the V missing, 13, 1973, invoice.

24 (Previously marked Exhibit 131 was identified.)

25 ///

1 BY MR. WEXLER:

2 Q. And this one is -- I guess we can look at
3 your list of exhibits and Exhibit 297, your expert
4 report, this one is your K2.

5 And you've seen this document before?

6 A. Let's see.

7 Yes, this is -- well --

8 Q. You have a typo in your date there. You
9 say November 11th.

10 A. Yes.

11 Q. I will represent to you that's the one.

12 A. I was just going to say, there's a typo.

13 Yes, I do recognize this and it's described
14 as K2.

15 Q. And it's signed "N. Tsuburaya"?

16 A. That's correct.

17 MR. WEXLER: I will give you now
18 Exhibit 130. This is a November 26, 1973,
19 agreement.

20 (Previously marked Exhibit 130 was identified.)

21 BY MR. WEXLER:

22 Q. And it is your K3, I believe. Please
23 confirm that.

24 A. Yes.

25 Q. You may not have the Japanese language

1 stuff at the back.

2 A. That's correct.

3 MR. WEXLER: And I'm going to give you now
4 a document I've marked as Exhibit 310. I don't
5 believe this one has previously been marked. And I
6 don't believe it is an exhibit that you've
7 previously used, although it's K08 to Mr. Wakshull's
8 expert report.

9 (Exhibit 310 was marked for identification.)

10 BY MR. WEXLER:

11 Q. Please look at this. See it's signed "N.
12 Tsuburaya"?

13 A. Yes, I do.

14 Q. Is that signature within the normal range
15 of Noboru Tsuburaya's signatures?

16 A. It certainly is, yes.

17 MR. WEXLER: And then I will now show you
18 Exhibit 134. This is also a March 7, 1974, invoice.
19 It's a slightly different one. It is your K5.

20 (Previously marked Exhibit 134 was identified.)

21 BY MR. WEXLER:

22 Q. Now please confirm that you've seen that
23 one.

24 A. Yes, it is my K5.

25 Q. And this one is also signed "N. Tsuburaya"?

1 A. That's correct.

2 MR. WEXLER: And now I will give you
3 Exhibit 135, a September 3, 1974, agreement which is
4 your K4.

5 (Previously marked Exhibit 135 was identified.)

6 THE WITNESS: Yes.

7 BY MR. WEXLER:

8 Q. And once again it's got a couple of
9 Japanese pages in the back which are probably not
10 part of yours.

11 Please confirm this one is signed "N.
12 Tsuburaya" as well.

13 A. Yes.

14 MR. WEXLER: Going to give you now
15 previously marked Exhibit 136. It's an October 14,
16 1974, agreement. Once again there's a Japanese
17 language attachment that probably wasn't attached to
18 yours.

19 (Previously marked Exhibit 136 was identified.)

20 BY MR. WEXLER:

21 Q. Please confirm that this one is your K6.

22 A. Yes.

23 Q. So we have a typo there. It should be
24 October 14, not October 10.

25 A. Okay.

1 Q. And this was also signed "N. Tsuburaya"?

2 A. Yes, it is.

3 MR. WEXLER: Now I'm going to show you

4 Exhibit 311. This one wasn't in your report and I
5 don't believe it was in Mr. Wakshull's report
6 either. It's an undated "Proforma Invoice" to
7 Chaiyo Film Company, Exhibit 311.

8 (Exhibit 311 was marked for identification.)

9 BY MR. WEXLER:

10 Q. Does that signature say "N. Tsuburaya"?

11 A. It does.

12 Q. Is that also within the range of variation
13 of Noboru Tsuburaya's signatures?

14 A. It is.

15 MR. WEXLER: And, finally, I will give you
16 Exhibit 171, a March 10, 1984, contract.

17 (Previously marked Exhibit 171 was identified.)

18 BY MR. WEXLER:

19 Q. Please look at this and confirm that this,
20 without the Japanese translation at the back, is
21 your K22.

22 A. It is.

23 Q. And this one is signed "Noboru Tsuburaya",
24 not "N. Tsuburaya"?

25 A. That's correct.

1 Q. Okay. But with that exception, all the
2 documents I've just given you are signed "N.
3 Tsuburaya"?

4 A. That's correct.

5 Q. Do you have an opinion whether someone
6 looking at these signatures would have attempted to
7 copy them by writing a signature that looked like
8 the signature on the 1976 agreement, your Q1?

9 MR. POSNER: Objection. Calls for
10 speculation.

11 THE WITNESS: That certainly would be
12 speculation, because I don't know if these
13 signatures are limited to what an individual would
14 have to use as model signatures.

15 In other words, conversely, as you are
16 talking about or questioning me about what if a
17 person selectively produces certain signatures to
18 me, well, these could have been selectively produced
19 as well and there's no evidence presented to me that
20 this is all they had available, but, regardless,
21 there is a full Noboru Tsuburaya signature. It's
22 more of his scrawled-style signature towards the
23 end.

24 So, to answer your question, based upon
25 what you just gave me I don't think an individual

1 would have been able to complete the pictorial
2 resemblance of the questioned signatures only
3 relying upon these signatures that you just produced
4 to me.

5 BY MR. WEXLER:

6 Q. So you think that there would have been
7 some other document out there or at least one other,
8 maybe more than one other, with Noboru Tsuburaya's
9 signature on there in order for somebody to try to
10 copy it?

11 A. I don't know what signatures the imitator
12 had in his or her possession when these questioned
13 signatures were imitated, so it's beyond my
14 capabilities and it would be pure speculation for me
15 to say that there are signatures floating around out
16 there that they may have had possession of.

17 Certainly they should have had possession
18 of signatures that had the full first name Noboru
19 and a more legible Tsuburaya.

20 Q. Because they couldn't have made a freehand
21 copy of Noboru unless they had something that said
22 Noboru on it that looked, you know, enough similar
23 to your known Noboru Tsuburaya signatures for you to
24 say there's some resemblances?

25 A. That's correct. As I previously testified

1 to, based upon what you just submitted to me it's
2 not likely, in my opinion, that the person if this
3 is all they had would be able to successfully copy
4 certain characteristics that are not found in these
5 signatures.

6 Q. And these "N. Tsuburaya" signatures here,
7 you didn't include them on pages -- any of them on
8 pages 2 or 3 of your Exhibit B; correct?

9 A. That's correct.

10 Q. Why not?

11 A. Because they didn't exhibit the full name,
12 first name and in order to do a comparison you have
13 to have all comparable letters and letter
14 combinations.

15 Everything in the "N. Tsuburaya" signatures
16 is in full agreement with the comparable letters in
17 the other known signatures, but to use just "N.
18 Tsuburaya" in a chart comparing it to "Noboru
19 Tsuburaya" doesn't make any sense. You have to show
20 the same letters and letter combinations.

21 As far as evaluating them, I certainly
22 examined and evaluated every "N. Tsuburaya"
23 signature that at least is in my report. So, once
24 again, you don't put "N. Tsuburaya" and try to show
25 the trier of fact, for example, that it compares

1 signatures as in this case.

2 Q. Okay. And so "N. Tsuburaya" versus "Noboru
3 Tsuburaya" is not a difference that would cause you
4 to think that one of the signatures is not genuine?

5 A. Oh, absolutely not.

6 MR. WEXLER: Going to get on to those
7 photographs. I'm going to mark that as Exhibit 312,
8 this document, which is two pages UNC0019484 through
9 -85.

10 (Exhibit 312 was marked for identification.)

11 BY MR. WEXLER:

12 Q. On the second page there's a couple of
13 photographs and some handwriting.

14 You've seen this document before; correct?

15 A. Yes, I have.

16 Q. And you've stated your opinion that the
17 person who wrote "Noboru Tsuburaya" on this is --
18 let me ask this a different way.

19 Do you have an opinion as to who wrote the
20 English language signature there, "Noboru
21 Tsuburaya"?

22 A. I don't know who wrote that signature.

23 Q. Do you have an opinion about that in
24 relation to Q1, Q2?

25 A. Yes. There are similar features in common

1 between this "Noboru Tsuburaya" signature and the Q1
2 and Q2 signatures and the signature clearly written
3 with a wide-nib pen and it's even written similar or
4 slower than the Q1 and Q2 signatures and it actually
5 exhibits more discernible differences than the Q1
6 and Q2 signatures.

7 Q. Would you consider this a formal signature?

8 A. No. I would consider this an imitated
9 signature.

10 Q. Because it's written slowly and because you
11 don't like -- or because the features you believe
12 are not comparable?

13 A. Absolutely, yes.

14 Q. Are formal signatures written more slowly
15 than non-formal signatures?

16 A. Not always.

17 Q. Sometimes?

18 A. Sometimes.

19 Q. Are autographs sometimes written more
20 slowly than non-formal signatures?

21 MR. POSNER: Calls for speculation.

22 MR. WEXLER: He's an expert.

23 THE WITNESS: Based on my experience with
24 autographs, autographs are generally written more
25 fluently and more informally.

1 Q. How about the "Mr. Sampote" up there in the
2 upper left. Do you have any opinion as to who wrote
3 those words?

4 A. No, I don't.

5 Q. Do you have any opinion as to the speed and
6 fluidity of that?

7 A. That appears to have been written with more
8 speed and fluidity; however, it was written with a
9 similar style wide-nib pen, but I don't know who
10 wrote that.

11 MR. WEXLER: Let's look at the other
12 photograph, Exhibit 313, UMC00019573.

13 (Exhibit 313 was marked for identification.)

14 BY MR. WEXLER:

15 Q. And now this is the other photograph that
16 you've seen in Mr. Wakshull's report?

17 A. That's correct.

18 Q. Do you have any opinion as to the
19 relationship between the "Noboru Tsuburaya"
20 signature on this and Q1 and Q2?

21 A. Yes, and also the Noboru Tsuburaya on the
22 picture. They are all similar. They are all
23 non-genuine signatures. They all exhibit very
24 similar errors of simulation in common and they
25 were -- and this was written with a wide-nib pen

1 which could possibly be a fiber-tip pen.

2 Q. And what's the significance of a fiber-tip
3 pen as opposed to just a wide-nib pen?

4 A. Well, it's one term, wide-nib fiber-tip
5 pen. In other words, some fiber-tip pens have what
6 are called the hard head, the tips or nibs, we call
7 it, and some have different millimeter,
8 6 millimeter, 10 millimeter tips to them which
9 produce a wider line.

10 Q. So a Sharpie is a wide-nib fiber-tip pen?

11 A. Yes. An average Sharpie would be
12 considered a wide-nib fiber-tip pen.

13 Q. So the "N. Tsuburaya" signature on
14 Exhibit 313, do you have any opinions as to who
15 wrote that?

16 A. I don't have any opinions as to who wrote
17 it.

18 Q. Do you have an opinion as to whether or not
19 it's authentic?

20 A. No; however, this "N. Tsuburaya" signature
21 on the photograph, it embodies the characteristics
22 of the genuine signature. It's not in the same
23 category as the other non-genuine signatures and it
24 was also written with a wide nib type of writing
25 instrument, could have been a fiber-tip pen.

1 Q. Well, are you comfortable stating your
2 opinion as elimination even though you reviewed only
3 a limited number of signatures?

4 MR. POSNER: Objection. Vague.

5 THE WITNESS: I didn't review a limited
6 number of signatures, known signatures. Are you
7 talking about known signatures?

8 BY MR. WEXLER:

9 Q. Yeah. I can rephrase it.

10 A. Yeah.

11 Q. Are you comfortable stating your opinion as
12 elimination even though you reviewed only 29 known
13 signatures?

14 A. Very comfortable, yes.

15 Q. Are you comfortable stating your opinion as
16 elimination even though the signatures that you were
17 provided may not have been representative of Noboru
18 Tsuburaya's full range of variation of signatures
19 during the 1970s?

20 A. Once again, that's speculation. I can only
21 rely upon the 29 known signatures and in my opinion
22 they represent a fair variation, a fair degree of
23 variation, in his known signatures.

24 Q. Are you comfortable stating your opinion as
25 elimination even though we saw that testimony from

1 Q. Well, you've testified already that the
2 four questioned signatures, that they share
3 similarities among them that are not in common with
4 the 29 known signatures?

5 A. Correct.

6 Q. And the 29 known signatures you've cross-
7 compared, you've found similarities there and you
8 believe they're all signed by the same person?

9 A. Correct.

10 Q. And you don't know if that person is Noboru
11 Tsuburaya?

12 A. I have no idea.

13 Q. You've testified or opined, I think in your
14 rebuttal report, that some businesses have other
15 people signing documents on behalf of people?

16 A. I didn't testify to that today, but that is
17 the truth.

18 Q. It's in your report. It's not something
19 you said.

20 A. Did I? Okay.

21 MR. WEXLER: Okay. Going to give you
22 another SWGDOC standard. This is the "Standard for
23 Examination of Handwritten Items." It'll be
24 Exhibit 315.

25 (Exhibit 315 was marked for identification.)

1 A. I would have to go through every one to
2 tell you that, sir.

3 Q. Did that influence you in choosing these
4 five signatures?

5 A. Well, of course. Two things influenced me
6 in using these five signatures, that the five
7 signatures are a fair representative of
8 Mr. Tsuburaya's variation that is demonstrated by me
9 using two cursive Ses in "Tsuburaya," that is
10 demonstrated from me using a cursive style R versus
11 a manuscript R and this also is demonstrated by me
12 using a somewhat scrawled signature.

13 So these five signatures are a fair
14 representation of all of his known signatures and
15 they are clear enough to exhibit quite a bit of
16 detail that represents fluency and the normal
17 writing habits.

18 Some, like you produced to me today, they
19 do not show all those details, but, once again, I
20 can't tell you how many other are in the category of
21 the five on my chart without going through all of
22 them.

23 Q. Do you have any guess, you know, as to
24 whether more of them are of sufficient quality for
25 you to do that or, you know, a majority are not of

1 sufficient quality?

2 A. I think the majority are of quality to
3 adduce certain elements of the writing that are
4 necessary to support an identification or an
5 elimination, but some of them, as I mentioned, like
6 you produced to me aren't a total waste and useless
7 because the pictorial features of these signatures,
8 what are observable, are in full agreement with the
9 other known signatures but they are far removed from
10 all the questioned signatures.

11 Q. Are there any types of documents that you
12 typically would not consider in analyzing signatures
13 because the signatures on those documents are
14 sometimes not typical of the signing party's
15 signatures?

16 A. No. I consider all signatures. And, once
17 again, if the signatures fall out of the range of
18 variation, if they have elements of a slow drawing
19 imitative effort, then they're placed into
20 subsections again and I have to discuss the matter
21 with the client and determine if these ones that are
22 in another subset actually represent the genuine
23 signatures.

24 Q. Other than what we've discussed today, are
25 there any other opinions that you plan to express in

1 this matter?

2 A. As I previously testified to, depending on
3 what counsel wants me to do at trial as far as my
4 testimony, if they want me to testify about the
5 other two questioned signatures that not designated
6 in my report, then I may testify about those and
7 prepare demonstrable charts with those two
8 additional questioned signatures.

9 MR. POSNER: I'm just going to object to
10 the question belatedly because I don't think you
11 were ever asked tell me every opinion that you have
12 that you're expressing.

13 I think a lot of them have come up and
14 you've responded to them in the course of
15 questioning. The rest of them are probably in your
16 report.

17 I tend to think everything has been fairly
18 covered, but I think the question is not entirely
19 fair given the nature of the exam.

20 MR. WEXLER: I wouldn't say not fair, but I
21 will clarify that.

22 Q. Say other than when we've discussed today
23 and what's set forth in your initial and rebuttal
24 report, are there any other opinions that you plan
25 to express in this matter?

1 And I assume your answer is going to be the
2 same answer you just gave me.

3 A. No, if you include what we discussed today,
4 because those two questions, additional questioned
5 signatures were discussed today, then my answer is I
6 don't know of any other additional opinions I would
7 testify at trial about --

8 Q. Okay.

9 A. -- at this time.

10 MR. WEXLER: Thank you.

11 I think that's it for me unless Mr. Posner
12 has questions for you in which case I may have
13 followup, but then it will be his fault, not mine.

14 MR. POSNER: I have no questions.

15 THE WITNESS: Great. I have a dinner
16 appointment.

17 MR. WEXLER: Hopefully it's not at 5.

18 Okay. Same stipulation as yesterday, which
19 is going to be that you'll have 30 days after
20 receipt of the transcript, which will go to
21 Mr. Posner. He'll send it on to you, so you'll have
22 30 days to review and sign and make any revisions.

23 THE WITNESS: Right.

24 MR. POSNER: That's fine.

25 MR. WEXLER: Thank you.

1 THE VIDEOGRAPHER: This concludes today's
2 deposition. We're off the record at 5:28 p.m.

3 (The deposition was concluded at 5:28 p.m.)
4
5
6
7

8 I hereby declare under penalty of perjury
9 under the laws of the State of California that I
10 have read the foregoing deposition and that the
11 testimony contained therein is a true and correct
12 transcript of my testimony given at said time and
13 place.
14
15

16 Dated this _____ day of _____,
17 2017, at _____, _____.
18
19
20

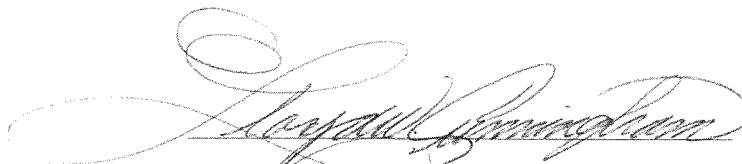
21 _____
22 Signature of Witness
23
24
25

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9 under the laws of the State of California that I
10 have read the foregoing deposition and that the
11 testimony contained therein is a true and correct
12 transcript of my testimony given at said time and
13 place.
14
15

16 Dated this 24th day of May,
17 2017, at Alamo, Ca.
18
19

20
21 
22 Signature of Witness
23
24
25

1 CERTIFICATE
2 OF
3 CERTIFIED SHORTHAND REPORTER
4

5 I, Stephanie P. Borthwick, Certified
6 Shorthand Reporter of the State of California, do
7 hereby certify:

8 That the foregoing deposition was taken
9 before me at the time and place therein set forth,
10 at which time the witness was duly sworn by me;

11 That the testimony of the witness and all
12 objections made at the time of the examination were
13 recorded stenographically by me and thereafter
14 transcribed, said transcript being a true copy of my
15 shorthand notes thereof, and a true record of the
16 testimony given by the witness.

17 Pursuant to Federal Rule 30(e), transcript
18 review was requested.

19 In witness whereof, I have subscribed my
20 name this date: May 10th, 2017.

21
22
23 _____
24 STEPHANIE P. BORTHWICK, CSR
25 Certificate No. 12088

1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 19 Line 5-8 Reason SCIENCE IN - CHANGED
SCIENCE AND

9 From SCIENCE IN to SCIENCE AND

10 Page 51 Line 22-23 Reason _____

11 From JAMES B. CONWAY to JAMES V.P. CONWAY

12 Page 35 Line 13-16 Reason _____

13 From THE REQUEST SIGNATURES to THE NON-REQUEST SIGNATURES

14 Page 39 Line 1 Reason _____

15 From ON A PICTORIAL to ON A PICTURE

16 Page 41 Line 16 Reason _____

17 From REPORTED KNOW SIGNATURE to PURPORTED KNOW SIGNATURE

18 Page 54 Line 11-12 Reason _____

19 From WOULD INFLUENCE ME to WOULD NOT INFLUENCE ME

20 Page 170 Line 19 Reason _____

21 From CONFIRMATION to CONFIRMATION

22 Page 227 Line 8 Reason _____

23 From SCROLLED to SCRAWLED

24

25

